

F92JBURC

Conference

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

15 Cr. 73 RMB

5 EVGENY BURYAKOV, et al.,

6 Defendants.

7 -----x

8
9 September 2, 2015
2:15 p.m.

10
11
12 Before:

13 HON. RICHARD M. BERMAN,

14 District Judge

15
16 APPEARANCES

17 PREET BHARARA,
18 United States Attorney for the
Southern District of New York
19 ADAM J. FEE,
Assistant United States Attorney

20 WHITE & CASE
Attorneys for defendant Buryakov
21 BY: SCOTT HERSHMAN, Esq.
C. KELLY NEWMAN, Esq.
22 Of counsel

23 Also Present:
MS. NELLY ALISHAEV,
24 Russian Interpreter

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1 (In open court)

2 (Case called)

3 THE COURT: How are you? Please be seated.

4 So as is our normal practice, we have a Russian
5 language interpreter present but on a standby basis. Is that
6 sufficient?

7 THE DEFENDANT: Yes.

8 MR. HERSHMAN: Yes, your Honor.

9 THE COURT: So today, as far as I am aware, this is a
10 normal status conference. We set our schedule the last time.
11 I think you were not here, Mr. Fee, when we set our schedule.

12 I don't have any issues on my agenda for today. If
13 you do, I am happy to hear them.

14 MR. FEE: I think only an update on the issues that
15 remained outstanding at the last conference. I can be very
16 brief, and I think the parties are in agreement on this update.

17 We met outside of the court's presence, of course, to
18 further discuss the request for additional information that
19 Mr. Buryakov's counsel has. I think we made some progress.

20 Yesterday there was an additional itemized set of
21 requests from Mr. Hershman, as counsel, and to be candid and
22 optimistic, I don't think there will be any problem getting the
23 information he needs. We responded just before the conference
24 to a piece of it. It is more factual information, where did
25 you find this item? What is the piece of data link to this? I

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1 believe the parties have made some progress with that.

2 The other significant outstanding issue I know was on
3 the court's mind, getting Mr. Buryakov himself access to all
4 the discovery. The one outstanding item that he did not have
5 access to was the video surveillance footage, which there is a
6 lot of it. What the government did was on August the 18th, we
7 forwarded the laptop to the MCC, and on that laptop was loaded
8 all of the video surveillance. We actually pulled it back
9 briefly to add all of the discovery, most of which has already
10 been available to Mr. Buryakov.

11 That laptop is now with the MCC. Our understanding is
12 it should be able to be viewed by Mr. Buryakov at the facility.
13 I will say -- and I know Mr. Hershman will speak to this --
14 they reported to us yesterday, counsel, that Mr. Buryakov has
15 not yet had access to it. We reached out to MCC counsel after
16 our phone call yesterday.

17 We were told by counsel they are making inquiries with
18 their Audiovisual Department which handles access. As soon as
19 we get more information, we'll share that with Mr. Hershman.
20 As always, we told Mr. Hershman if he wants to reach out to MCC
21 counsel directly, he is free to do so and we are happy to help
22 facilitate that.

23 In terms of the stuff, the data, it is now on a laptop
24 at the MCC.

25 THE COURT: That would be Adam Johnson?

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1 MR. FEE: Adam Johnson, correct.

2 THE COURT: Roughly do you have any idea how many
3 hours of surveillance tape was on there?

4 MR. FEE: I believe it is over a thousand. It might
5 be several thousand. There was some discussion about this in
6 the briefing. This was a running surveillance, surveillance
7 cameras.

8 We specified the non-exhaustive list, but the most
9 significant encounters we found on the surveillance footage, it
10 is a list of 30 or so. We provided that to counsel. We also
11 put that on the laptop. That should be in the MCC. That is in
12 the MCC possession and should be available to Mr. Buryakov to
13 help him.

14 THE COURT: Okay.

15 MR. HERSHMAN: Briefly, your Honor, I agree with
16 Mr. Fee regarding the discussions and the report on those
17 discussions. We have made some progress I believe resolving
18 issues that were raised by our bill of particulars motion. So
19 that is a positive report.

20 There are a couple of issues that are outstanding
21 which we were going to take up, and I believe we'll be able to
22 resolve those as well. I don't have any expectation we will
23 not be able to resolve them.

24 It is correct also that still to date Mr. Buryakov has
25 not had access to the video surveillance, notwithstanding some

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1 effort on the part of DOJ to provide that access. It is quite
2 frustrating since there were starts and stops along the way.

3 The computer was delivered to BOP. It was delivered
4 to BOP and returned to DOJ and returned again to BOP, and even
5 though it was returned apparently last week, still to date
6 Mr. Buryakov hasn't had it.

7 We did make contact with the legal department,
8 Ms. Newman did actually about a week or 10 days ago after we
9 learned the government turned the machine over, but they were
10 not able to satisfy our inquiry in terms of when he is actually
11 going to get access to the machine.

12 THE COURT: Did you or someone from your office speak
13 to Adam Johnson?

14 MR. HERSHMAN: I don't think it was Adam Johnson, but
15 a woman in the office.

16 THE COURT: Another counsel?

17 MR. HERSHMAN: Yes, it was another counsel.

18 THE COURT: Who specifically deals with this matter
19 or --

20 MR. HERSHMAN: It appeared to be someone who had
21 knowledge of the issue. Whether they deal regularly or not I
22 don't know. We will follow up again because still today he
23 hasn't been provided with that access. As Mr. Fee said, there
24 is quite a lot there for review.

25 The arrangement also that we hope will be in place

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1 will provide us with an opportunity to review that evidence
2 together with Mr. Buryakov at the MCC. So that hasn't been
3 tested yet in the sense we still don't have the machine. Once
4 the machine is there and accessible, we'll then have to test
5 whether it is actually workable for us to sit with Mr. Buryakov
6 and review that evidence.

7 THE COURT: Okay.

8 MR. HERSHMAN: So there is a lot to do there. Other
9 than that, I don't have anything to report.

10 THE COURT: All right. So do we need another
11 conference? We have a trial date of December 7. Do you want
12 an interim? In what time-frame?

13 MR. HERSHMAN: I think we should have --

14 THE COURT: Why don't you go off the record for a
15 minute and talk among yourselves.

16 (Off-the-record discussion)

17 MR. FEE: Your Honor set the final pretrial
18 conference, as you know, on December 1st. Mr. Hershman has
19 suggested -- and the government, of course, thinks it is a fine
20 idea -- to have a conference in late September to address any
21 additional applications he may have. He proposed, and the
22 government is available, September 30th, I believe, that is a
23 Wednesday.

24 THE COURT: That works for me.

25 MR. FEE: Great. I'll stop talking.

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1 THE COURT: September 30, at -- how is 11:00 am?

2 MR. HERSHMAN: Okay.

3 MR. FEE: Fine.

4 THE COURT: We'll put it down, Mr. Hershman, as a
5 status conference.

6 MR. HERSHMAN: Yes. It may be, your Honor, that if
7 there is no need for it, we can notify you in advance?

8 THE COURT: No problem. I am happy to see you. We
9 already have excluded time through the trial date, so we
10 needn't do that today. Good to see you all.

11 (Court adjourned)

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